



Sen. Patricia Van Pelt

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LRB099 18370 SLF 46983 a

1 AMENDMENT TO SENATE BILL 2370

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2370 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. The Counties Code is amended by changing  
5 Section 3-4006 as follows:

6 (55 ILCS 5/3-4006) (from Ch. 34, par. 3-4006)

7 Sec. 3-4006. Duties of public defender. The Public  
8 Defender, as directed by the court, shall act as attorney,  
9 without fee, before any court within any county for all persons  
10 who are held in custody or who are charged with the commission  
11 of any criminal offense, and who the court finds are unable to  
12 employ counsel.

13 The Public Defender shall be the attorney, without fee,  
14 when so appointed by the court under Section 1-20 of the  
15 Juvenile Court Act or Section 1-5 of the Juvenile Court Act of  
16 1987 or by any court under Section 5(b) of the Parental Notice

1 of Abortion Act of 1983 for any party who the court finds is  
2 financially unable to employ counsel.

3 In a homicide case involving a minor who was at least 13  
4 years of age but not older than 17 years of age at the time of  
5 commission of the offense, that occurs in a county with a  
6 full-time public defender office, a public defender, without  
7 fee or appointment, may represent and have access to a minor  
8 during a custodial interrogation. In a homicide case involving  
9 a minor who was at least 13 years of age but not older than 17  
10 years of age at the time of commission of the offense, that  
11 occurs in a county that does not have a full-time public  
12 defender, the law enforcement agency conducting the custodial  
13 interrogation shall ensure that the minor is able to consult  
14 with an attorney who is under contract with the county to  
15 provide public defender services. Representation by the public  
16 defender shall terminate at the first court appearance if the  
17 court determines that the minor is not indigent.

18 Every court shall, with the consent of the defendant and  
19 where the court finds that the rights of the defendant would be  
20 prejudiced by the appointment of the public defender, appoint  
21 counsel other than the public defender, except as otherwise  
22 provided in Section 113-3 of the "Code of Criminal Procedure of  
23 1963". That counsel shall be compensated as is provided by law.  
24 He shall also, in the case of the conviction of any such  
25 person, prosecute any proceeding in review which in his  
26 judgment the interests of justice require.

1 (Source: P.A. 86-962.)

2 Section 5. The Juvenile Court Act of 1987 is amended by  
3 changing Sections 5-170 and 5-401.5 as follows:

4 (705 ILCS 405/5-170)

5 Sec. 5-170. Representation by counsel.

6 (a) In a proceeding under this Article, a minor who was  
7 under 13 years of age at the time of the commission of an act  
8 that if committed by an adult would be a violation of Section  
9 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 9-3.3, 11-1.20, 11-1.30,  
10 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15, or  
11 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012  
12 must be represented by counsel throughout ~~during~~ the entire  
13 custodial interrogation of the minor.

14 (a-5) In a proceeding under this Article, a minor who was  
15 at least 13 years of age but not older than 17 years of age at  
16 the time of the commission of an act that if committed by an  
17 adult would be a violation of Section 9-1, 9-1.2, 9-2, 9-2.1,  
18 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 2012 must be  
19 represented by counsel throughout the entire custodial  
20 interrogation of the minor.

21 (b) In a judicial proceeding under this Article, a minor  
22 may not waive the right to the assistance of counsel in his or  
23 her defense.

24 (Source: P.A. 96-1551, eff. 7-1-11; 97-1150, eff. 1-25-13.)

1 (705 ILCS 405/5-401.5)

2 Sec. 5-401.5. When statements by minor may be used.

3 (a) In this Section, "custodial interrogation" means any  
4 interrogation (i) during which a reasonable person in the  
5 subject's position would consider himself or herself to be in  
6 custody and (ii) during which a question is asked that is  
7 reasonably likely to elicit an incriminating response.

8 In this Section, "electronic recording" includes motion  
9 picture, audiotape, videotape, or digital recording.

10 In this Section, "place of detention" means a building or a  
11 police station that is a place of operation for a municipal  
12 police department or county sheriff department or other law  
13 enforcement agency at which persons are or may be held in  
14 detention in connection with criminal charges against those  
15 persons or allegations that those persons are delinquent  
16 minors.

17 (b) An oral, written, or sign language statement of a minor  
18 who, at the time of the commission of the offense was under the  
19 age of 18 years, made as a result of a custodial interrogation  
20 conducted at a police station or other place of detention on or  
21 after the effective date of this amendatory Act of the 93rd  
22 General Assembly shall be presumed to be inadmissible as  
23 evidence against the minor in any criminal proceeding or  
24 juvenile court proceeding, for an act that if committed by an  
25 adult would be brought under Section 9-1, 9-1.2, 9-2, 9-2.1,

1 9-3, 9-3.2, or 9-3.3, of the Criminal Code of 1961 or the  
2 Criminal Code of 2012, or under clause (d)(1)(F) of Section  
3 11-501 of the Illinois Vehicle Code unless:

4 (1) an electronic recording is made of the custodial  
5 interrogation; and

6 (2) the recording is substantially accurate and not  
7 intentionally altered.

8 (b-5) Under the following circumstances, an oral, written,  
9 or sign language statement of a minor who, at the time of the  
10 commission of the offense was under the age of 17 years, made  
11 as a result of a custodial interrogation conducted at a police  
12 station or other place of detention shall be presumed to be  
13 inadmissible as evidence against the minor, unless an  
14 electronic recording is made of the custodial interrogation and  
15 the recording is substantially accurate and not intentionally  
16 altered:

17 (1) in any criminal proceeding or juvenile court  
18 proceeding, for an act that if committed by an adult would  
19 be brought under Section 11-1.40 or 20-1.1 of the Criminal  
20 Code of 1961 or the Criminal Code of 2012, if the custodial  
21 interrogation was conducted on or after June 1, 2014;

22 (2) in any criminal proceeding or juvenile court  
23 proceeding, for an act that if committed by an adult would  
24 be brought under Section 10-2, 18-4, or 19-6 of the  
25 Criminal Code of 1961 or the Criminal Code of 2012, if the  
26 custodial interrogation was conducted on or after June 1,

1 2015; and

2 (3) in any criminal proceeding or juvenile court  
3 proceeding, for an act that if committed by an adult would  
4 be brought under Section 11-1.30 or 18-2 or subsection (e)  
5 of Section 12-3.05 of the Criminal Code of 1961 or the  
6 Criminal Code of 2012, if the custodial interrogation was  
7 conducted on or after June 1, 2016.

8 (b-10) If, during the course of an electronically recorded  
9 custodial interrogation conducted under this Section of a minor  
10 who, at the time of the commission of the offense was under the  
11 age of 17 years, the minor makes a statement that creates a  
12 reasonable suspicion to believe the minor has committed an act  
13 that if committed by an adult would be an offense other than an  
14 offense required to be recorded under subsection (b) or (b-5),  
15 the interrogators may, without the minor's consent, continue to  
16 record the interrogation as it relates to the other offense  
17 notwithstanding any provision of law to the contrary. Any oral,  
18 written, or sign language statement of a minor made as a result  
19 of an interrogation under this subsection shall be presumed to  
20 be inadmissible as evidence against the minor in any criminal  
21 proceeding or juvenile court proceeding, unless the recording  
22 is substantially accurate and not intentionally altered.

23 (c) Every electronic recording made under this Section must  
24 be preserved until such time as the minor's adjudication for  
25 any offense relating to the statement is final and all direct  
26 and habeas corpus appeals are exhausted, or the prosecution of

1 such offenses is barred by law.

2 (d) If the court finds, by a preponderance of the evidence,  
3 that the minor was subjected to a custodial interrogation in  
4 violation of this Section, then any statements made by the  
5 minor during or following that non-recorded custodial  
6 interrogation, even if otherwise in compliance with this  
7 Section, are presumed to be inadmissible in any criminal  
8 proceeding or juvenile court proceeding against the minor  
9 except for the purposes of impeachment.

10 (d-5) An oral, written, or sign language statement of a  
11 minor made without counsel present throughout the entire  
12 custodial interrogation of the minor in violation of  
13 subsections (a) or (a-5) of Section 5-170 of this Act shall be  
14 inadmissible as evidence against the minor in any juvenile  
15 court proceeding or criminal proceeding.

16 (e) Nothing in this Section precludes the admission (i) of  
17 a statement made by the minor in open court in any criminal  
18 proceeding or juvenile court proceeding, before a grand jury,  
19 or at a preliminary hearing, (ii) of a statement made during a  
20 custodial interrogation that was not recorded as required by  
21 this Section because electronic recording was not feasible,  
22 (iii) of a voluntary statement, whether or not the result of a  
23 custodial interrogation, that has a bearing on the credibility  
24 of the accused as a witness, (iv) of a spontaneous statement  
25 that is not made in response to a question, (v) of a statement  
26 made after questioning that is routinely asked during the

1 processing of the arrest of the suspect, (vi) of a statement  
2 made during a custodial interrogation by a suspect who  
3 requests, prior to making the statement, to respond to the  
4 interrogator's questions only if an electronic recording is not  
5 made of the statement, provided that an electronic recording is  
6 made of the statement of agreeing to respond to the  
7 interrogator's question, only if a recording is not made of the  
8 statement, (vii) of a statement made during a custodial  
9 interrogation that is conducted out-of-state, (viii) of a  
10 statement given in violation of subsection (b) at a time when  
11 the interrogators are unaware that a death has in fact  
12 occurred, (ix) of a statement given in violation of subsection  
13 (b-5) at a time when the interrogators are unaware of facts and  
14 circumstances that would create probable cause to believe that  
15 the minor committed an act that if committed by an adult would  
16 be an offense required to be recorded under subsection (b-5),  
17 or (x) of any other statement that may be admissible under law.  
18 The State shall bear the burden of proving, by a preponderance  
19 of the evidence, that one of the exceptions described in this  
20 subsection (e) is applicable. Nothing in this Section precludes  
21 the admission of a statement, otherwise inadmissible under this  
22 Section, that is used only for impeachment and not as  
23 substantive evidence.

24 (f) The presumption of inadmissibility of a statement made  
25 by a suspect at a custodial interrogation at a police station  
26 or other place of detention may be overcome by a preponderance

1 of the evidence that the statement was voluntarily given and is  
2 reliable, based on the totality of the circumstances.

3 (g) Any electronic recording of any statement made by a  
4 minor during a custodial interrogation that is compiled by any  
5 law enforcement agency as required by this Section for the  
6 purposes of fulfilling the requirements of this Section shall  
7 be confidential and exempt from public inspection and copying,  
8 as provided under Section 7 of the Freedom of Information Act,  
9 and the information shall not be transmitted to anyone except  
10 as needed to comply with this Section.

11 (h) A statement, admission, confession, or incriminating  
12 information made by or obtained from a minor related to the  
13 instant offense, as part of any behavioral health screening,  
14 assessment, evaluation, or treatment, whether or not  
15 court-ordered, shall not be admissible as evidence against the  
16 minor on the issue of guilt only in the instant juvenile court  
17 proceeding. The provisions of this subsection (h) are in  
18 addition to and do not override any existing statutory and  
19 constitutional prohibition on the admission into evidence in  
20 delinquency proceedings of information obtained during  
21 screening, assessment, or treatment.

22 (i) The changes made to this Section by Public Act 98-61  
23 apply to statements of a minor made on or after January 1, 2014  
24 (the effective date of Public Act 98-61).

25 (Source: P.A. 97-1150, eff. 1-25-13; 98-61, eff. 1-1-14;  
26 98-547, eff. 1-1-14; 98-756, eff. 7-16-14.)

1 Section 10. The Code of Criminal Procedure of 1963 is  
2 amended by changing Section 103-2.1 as follows:

3 (725 ILCS 5/103-2.1)

4 Sec. 103-2.1. When statements by accused may be used.

5 (a) In this Section, "custodial interrogation" means any  
6 interrogation during which (i) a reasonable person in the  
7 subject's position would consider himself or herself to be in  
8 custody and (ii) during which a question is asked that is  
9 reasonably likely to elicit an incriminating response.

10 In this Section, "place of detention" means a building or a  
11 police station that is a place of operation for a municipal  
12 police department or county sheriff department or other law  
13 enforcement agency, not a courthouse, that is owned or operated  
14 by a law enforcement agency at which persons are or may be held  
15 in detention in connection with criminal charges against those  
16 persons.

17 In this Section, "electronic recording" includes motion  
18 picture, audiotape, or videotape, or digital recording.

19 (b) An oral, written, or sign language statement of an  
20 accused made as a result of a custodial interrogation conducted  
21 at a police station or other place of detention shall be  
22 presumed to be inadmissible as evidence against the accused in  
23 any criminal proceeding brought under Section 9-1, 9-1.2, 9-2,  
24 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961 or the

1 Criminal Code of 2012 or under clause (d)(1)(F) of Section  
2 11-501 of the Illinois Vehicle Code unless:

3 (1) an electronic recording is made of the custodial  
4 interrogation; and

5 (2) the recording is substantially accurate and not  
6 intentionally altered.

7 (b-5) Under the following circumstances, an oral, written,  
8 or sign language statement of an accused made as a result of a  
9 custodial interrogation conducted at a police station or other  
10 place of detention shall be presumed to be inadmissible as  
11 evidence against the accused, unless an electronic recording is  
12 made of the custodial interrogation and the recording is  
13 substantially accurate and not intentionally altered:

14 (1) in any criminal proceeding brought under Section  
15 11-1.40 or 20-1.1 of the Criminal Code of 1961 or the  
16 Criminal Code of 2012, if the custodial interrogation was  
17 conducted on or after June 1, 2014;

18 (2) in any criminal proceeding brought under Section  
19 10-2, 18-4, or 19-6 of the Criminal Code of 1961 or the  
20 Criminal Code of 2012, if the custodial interrogation was  
21 conducted on or after June 1, 2015; and

22 (3) in any criminal proceeding brought under Section  
23 11-1.30 or 18-2 or subsection (e) of Section 12-3.05 of the  
24 Criminal Code of 1961 or the Criminal Code of 2012, if the  
25 custodial interrogation was conducted on or after June 1,  
26 2016.

1 (b-10) If, during the course of an electronically recorded  
2 custodial interrogation conducted under this Section, the  
3 accused makes a statement that creates a reasonable suspicion  
4 to believe the accused has committed an offense other than an  
5 offense required to be recorded under subsection (b) or (b-5),  
6 the interrogators may, without the accused's consent, continue  
7 to record the interrogation as it relates to the other offense  
8 notwithstanding any provision of law to the contrary. Any oral,  
9 written, or sign language statement of an accused made as a  
10 result of an interrogation under this subsection shall be  
11 presumed to be inadmissible as evidence against the accused in  
12 any criminal proceeding, unless the recording is substantially  
13 accurate and not intentionally altered.

14 (b-15) An oral, written, or sign language statement of a  
15 minor made without counsel present throughout the entire  
16 custodial interrogation of the minor in violation of  
17 subsections (a) or (a-5) of Section 5-170 of the Juvenile Court  
18 Act of 1987 shall be inadmissible as evidence against the minor  
19 in a criminal proceeding brought under the Criminal Code of  
20 2012.

21 (c) Every electronic recording made under this Section must  
22 be preserved until such time as the defendant's conviction for  
23 any offense relating to the statement is final and all direct  
24 and habeas corpus appeals are exhausted, or the prosecution of  
25 such offenses is barred by law.

26 (d) If the court finds, by a preponderance of the evidence,

1 that the defendant was subjected to a custodial interrogation  
2 in violation of this Section, then any statements made by the  
3 defendant during or following that non-recorded custodial  
4 interrogation, even if otherwise in compliance with this  
5 Section, are presumed to be inadmissible in any criminal  
6 proceeding against the defendant except for the purposes of  
7 impeachment.

8 (e) Nothing in this Section precludes the admission (i) of  
9 a statement made by the accused in open court at his or her  
10 trial, before a grand jury, or at a preliminary hearing, (ii)  
11 of a statement made during a custodial interrogation that was  
12 not recorded as required by this Section, because electronic  
13 recording was not feasible, (iii) of a voluntary statement,  
14 whether or not the result of a custodial interrogation, that  
15 has a bearing on the credibility of the accused as a witness,  
16 (iv) of a spontaneous statement that is not made in response to  
17 a question, (v) of a statement made after questioning that is  
18 routinely asked during the processing of the arrest of the  
19 suspect, (vi) of a statement made during a custodial  
20 interrogation by a suspect who requests, prior to making the  
21 statement, to respond to the interrogator's questions only if  
22 an electronic recording is not made of the statement, provided  
23 that an electronic recording is made of the statement of  
24 agreeing to respond to the interrogator's question, only if a  
25 recording is not made of the statement, (vii) of a statement  
26 made during a custodial interrogation that is conducted

1 out-of-state, (viii) of a statement given in violation of  
2 subsection (b) at a time when the interrogators are unaware  
3 that a death has in fact occurred, (ix) of a statement given in  
4 violation of subsection (b-5) at a time when the interrogators  
5 are unaware of facts and circumstances that would create  
6 probable cause to believe that the accused committed an offense  
7 required to be recorded under subsection (b-5), or (x) of any  
8 other statement that may be admissible under law. The State  
9 shall bear the burden of proving, by a preponderance of the  
10 evidence, that one of the exceptions described in this  
11 subsection (e) is applicable. Nothing in this Section precludes  
12 the admission of a statement, otherwise inadmissible under this  
13 Section, that is used only for impeachment and not as  
14 substantive evidence.

15 (f) The presumption of inadmissibility of a statement made  
16 by a suspect at a custodial interrogation at a police station  
17 or other place of detention may be overcome by a preponderance  
18 of the evidence that the statement was voluntarily given and is  
19 reliable, based on the totality of the circumstances.

20 (g) Any electronic recording of any statement made by an  
21 accused during a custodial interrogation that is compiled by  
22 any law enforcement agency as required by this Section for the  
23 purposes of fulfilling the requirements of this Section shall  
24 be confidential and exempt from public inspection and copying,  
25 as provided under Section 7 of the Freedom of Information Act,  
26 and the information shall not be transmitted to anyone except

1 as needed to comply with this Section.

2 (Source: P.A. 97-1150, eff. 1-25-13; 98-547, eff. 1-1-14.)".